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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAM RASHID,

Defendant and Appellant.

A147067

(Alameda County  
Super. Ct. No. C175418)

Defendant Adam Rashid was convicted of felony second degree burglary and placed on formal probation in San Francisco Superior Court. Rashid's case was subsequently transferred to Alameda County, where he then permanently resided, pursuant to Penal Code section 1203.9.<sup>1</sup> More than a year after the transfer was ordered, Rashid requested reduction of his conviction to a misdemeanor under Proposition 47 from the Alameda County Superior Court, which denied his request.

On appeal from the denial order, Rashid claims he was entitled to retroactive application of the new criminal law added by Proposition 47 under "the rule of *Estrada*." (*In re Estrada* (1965) 63 Cal.2d 740, 748 (*Estrada*) ["where the amendatory statute mitigates punishment and there is no saving clause, the rule is that the amendment will operate retroactively so that the lighter punishment is imposed"].) This claim, in turn, is premised on the argument that Rashid is otherwise unable to receive the benefit of Proposition 47 because section 1170.18, which provides a procedure for petitioning for

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<sup>1</sup> Subsequent statutory references are to the Penal Code.

resentencing, does not apply to probationers such as him. After the parties completed their briefing on appeal, our judicial district addressed identical arguments in *People v. Davis* (2016) 246 Cal.App.4th 127, 133, review granted July 13, 2016, S234324 (*Davis*) and *People v. Curry* (2016) 1 Cal.App.5th 1073, 1077–1080, review granted November 9, 2016, S237037 (*Curry*).) Following *Davis* and *Curry*, we conclude section 1170.18 applies to Rashid, and the new criminal statutes created by Proposition 47 do not apply retroactively to him.

The case raises a second issue. In denying Rashid’s motion, the Alameda County Superior Court stated that a petition under section 1170.18 must be filed in the county of conviction (in this case, San Francisco). We reject Rashid’s assertion that Alameda County, rather than San Francisco County, would have jurisdiction to decide a petition for resentencing under section 1170.18.

We affirm the trial court’s order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In February 2014, Rashid entered a guilty plea to felony second degree burglary in violation of section 459 in San Francisco Superior Court. At the sentencing hearing the next month, the court suspended imposition of sentence and granted Rashid probation for a period of five years with various terms and conditions.

In October 2014, the trial court granted the probation department’s motion to transfer probation to Alameda County pursuant to section 1203.9. In January 2015, Alameda County Superior Court filed an order accepting the transfer.

In November 2014, the voter-passed initiative, Proposition 47, the Safe Neighborhoods and Schools Act, went into effect. (*People v. Contreras* (2015) 237 Cal.App.4th 868, 889.) Proposition 47 reduced certain theft offenses to misdemeanors when the value of the property taken is \$950 or less. (See *id.* at p. 890.) It also added section 1170.18, under which a “person currently serving a sentence . . . who would have been guilty of a misdemeanor under [Proposition 47] had [it] been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with [the

new and newly amended laws of Proposition 47].” (§ 1170.18, subd. (a); *People v. Contreras*, at p. 891.)

In November 2015, Rashid requested from the Alameda Superior Court that his conviction be reduced to a misdemeanor pursuant to Proposition 47. His attorney told the court Rashid’s conviction was based on shoplifting a pair of pants worth “a lot less than \$950.” He also stated that Rashid’s request was *not* a petition under section 1170.18: “It is the position of my office that my client does not need to proceed pursuant to Penal Code section 1170.18 because as a probationer, he is not currently serving his sentence within the meaning of that statute. Rather, he is entitled to relief directly under the rule of . . . *Estrada*.”

The trial court denied the request on the ground Proposition 47 did not retroactively apply to automatically reduce Rashid’s conviction to a misdemeanor, and the appropriate vehicle for seeking relief under Proposition 47 was a petition for recall of sentence under section 1170.18. The court further stated that such a petition must be filed in the court of conviction (in this case, San Francisco Superior Court).

## **DISCUSSION**

### **A. *Proposition 47 and Retroactivity***

Rashid continues to claim he was entitled to automatic reduction of his conviction to a misdemeanor through retroactive application of Proposition 47. Proposition 47 added section 459.5, which “created a new crime of ‘shoplifting,’ a misdemeanor offense that punishes certain conduct that previously would have qualified as a burglary.” (*In re J.L.* (2015) 242 Cal.App.4th 1108, 1112.) Rashid argues that under the rule of *Estrada*, he “was entitled upon his request to have [his conviction] reduced to a misdemeanor upon a showing he was eligible for that relief.” In other words, he claims that if he can establish the value of the pants he took was less than \$950, his conviction for felony

second degree burglary must be redesignated as misdemeanor shoplifting and he must be resentenced accordingly.<sup>2</sup>

However, a person who was already on probation at the time Proposition 47 went into effect is not entitled to automatic redesignation and resentencing under the new law, and instead may seek the benefit of Proposition 47 through the petition procedure of section 1170.18. (*Davis, supra*, 246 Cal.App.4th at pp. 137, 143; cf. *People v. Conley* (2016) 63 Cal.4th 646, 652 [persons sentenced prior to enactment of Proposition 36 not entitled to automatic resentencing; instead they must seek relief through the procedure provided for in the law, a petition for recall of sentence].<sup>3</sup>)

Our division has already considered and found unpersuasive Rashid's legal arguments for retroactive application of Proposition 47. In *Curry, supra*, 1 Cal.App.5th

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<sup>2</sup> One may wonder why Rashid does not simply file a petition under section 1170.18. It may be that Rashid wants to avoid the prohibition from possessing firearms. Subdivision (k) of section 1170.18 provides, "Any felony conviction that is recalled and resentenced under [this statute] shall be considered a misdemeanor for all purposes, *except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm.*" (Italics added.) (See *Davis, supra*, 246 Cal.App.4th at p. 133, fn. 2 ["Although defense counsel did not explain defendant's reluctance to petition for recall of sentence under section 1170.18, we presume he was attempting to avoid the continued ban on firearm possession imposed by section 1170.18, subdivision (k)"].)

<sup>3</sup> The California Supreme Court's analysis of Proposition 36 is relevant because Proposition 47 is "strikingly similar to Proposition 36, 'The Three Strikes Reform Act of 2012.'" (Couzens & Bigelow, PROPOSITION 47 "The Safe Neighborhoods and Schools Act" (May 2016) p. 6 <<http://www.courts.ca.gov/documents/Prop-47-Information.pdf>> (Couzens & Bigelow).) "Both initiatives contain a reduction in penalty for certain crimes and a resentencing process for people who would be entitled to lesser punishment had the crime been committed after the enactment of the new law," and "[s]ome of the statutory language [of section 1170.18] is taken directly from section 1170.126, the resentencing provisions of Proposition 36. Accordingly, much of the appellate interpretation of Proposition 36 is likely relevant in the interpretation of Proposition 47." (Couzens & Bigelow, *supra*, at p. 6.)

1073, the legal arguments were virtually identical—using nearly identical language—to Rashid’s current appellate arguments.<sup>4</sup>

Moreover, in *Davis*, Division One of this court rejected the claim Rashid now makes that a person on probation at the time Proposition 47 went into effect would not be eligible to use section 1170.18 and therefore such a person must receive the ameliorative effect of Proposition 47 retroactively under the rule of *Estrada*. (*Davis, supra*, 246 Cal.App.4th at p. 132.) Considering the purpose of Proposition 47 as a whole, the court determined that section 1170.18 was intended to apply “to persons who had already suffered felony convictions for crimes now declared to be misdemeanors,” regardless of whether those persons received prison terms or were granted probation. (*Id.* at p. 142.) Therefore, the court concluded that a person on probation when Proposition 47 went into effect is “within the class of persons covered by section 1170.18, subdivision (a).” (*Id.* at p. 143; see also *People v. Garcia* (2016) 245 Cal.App.4th 555, 559 [section 1170.18 applies “to all those with felony dispositions, including those placed on probation”].) Because probationers (such as Rashid) are covered by section 1170.18, “there is no need, and no place, for inferences about retroactive application, and therefore no basis for invoking *Estrada*.” (*Davis, supra*, 246 Cal.App.4th at p. 137.)<sup>5</sup>

Following *Curry* and *Davis*, we conclude Rashid is not entitled to automatic redesignation and resentencing of his conviction, but he may seek resentencing through the petition procedure of section 1170.18. (See *Davis, supra*, 246 Cal.App.4th at p. 143.)

**B. *Jurisdiction to Decide a Petition for Resentencing Under Section 1170.18***

As we have described, section 1170.18 allows a person “who would have been guilty of a misdemeanor under [Proposition 47] had [it] been in effect at the time of the

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<sup>4</sup> It is understandable that the arguments are the same given that Rashid and defendant Curry share the same appellate counsel, and counsel did not have the benefit of the *Curry* decision when Rashid’s appellate briefs were filed.

<sup>5</sup> Rashid filed a supplemental letter brief addressing *Davis*. We have considered the letter, but we are not convinced *Davis* was wrongly decided.

offense” to petition for a recall of sentence “before the trial court that entered the judgment of conviction in his or her case.” (§ 1170.18, subd. (a).)

Here, Rashid was convicted of second degree burglary and placed on formal probation in San Francisco Superior Court. His case was then transferred to Alameda County pursuant to section 1203.9, which authorizes the court to transfer a probationer’s “case to the superior court in any other county in which the person resides permanently.” (§ 1203.9, subd. (a)(1).) Under the statute, “[t]he court of the receiving county shall accept the entire jurisdiction over the case.” (*Id.*, subd. (b).)

Rashid claims the trial court supervising probation (in this case, Alameda County) has exclusive jurisdiction to reduce a probationer’s conviction to a misdemeanor under Proposition 47. It is not necessary to address this jurisdictional question to decide this appeal because Rashid did not file a petition under section 1170.18, and he continues to insist section 1170.18 does not apply to him. But we briefly address the issue to provide Rashid and the trial courts guidance should Rashid choose to file a petition.

As with the previous argument, we considered and rejected Rashid’s position in *Curry, supra*, 1 Cal.App.5th 1073. The defendant in *Curry*, like Rashid, argued that, following the transfer of her case under section 1203.9, the receiving court had jurisdiction over her section 1170.18 petition. (*Id.* at p. 1080.) After examining the language of section 1170.18 and the purpose of Proposition 47, we concluded the defendant’s position was “clearly inconsistent with the voters’ plain language and obvious intent.” (*Id.* at p. 1081.)

We recognize that *People v. Adelmann* (2016) 2 Cal.App.5th 1188, review granted November 9, 2016, S237602 (*Adelmann*) reached a different conclusion. In that case, defendant Adelmann was sentenced to probation by the San Diego Superior Court, and the case was transferred under section 1203.9 to Riverside County. Adelmann first filed a section 1170.18 petition in San Diego Superior Court to no avail; the clerk rejected the filing. Adelmann then filed his petition in Riverside County. (*Id.* at p. 1192.) The Court of Appeal held Riverside County could decide the defendant’s section 1170.18 petition. (*Id.* at p. 1196.)

The *Adelmann* court attempted to distinguish *Curry* based on the distinction that defendant Curry was subject to postrelease community supervision (PRCS). (*Adelmann, supra*, 2 Cal.App.5th at p. 1194.) However, our statutory analysis in *Curry* did not depend on the fact that Curry was subject to PRCS. Suffice it to say, we follow *Curry*, and conclude that San Francisco County, not Alameda County, would have jurisdiction to decide a petition under section 1170.18 should Rashid elect to seek such relief.

#### **DISPOSITION**

The order is affirmed.

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Miller, J.

We concur:

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Kline, P.J.

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Richman, J.

A147067, *People v. Rashid*